Serial No. 10/786,980

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METHOD AND SYSTEM FOR PROVIDING AUTOMATED
VEHICLE DIAGNOSTIC FUNCTION UTILIZING TELEMATICS UNIT

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Group Art Unit: 2863

Examiner: John H. Le

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REPLY BRIEF

Board of Patent Appeals and Interferences
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

      This Reply Brief is being filed in reply to the Examiner's Answer mailed January 8, 2008.

      For the reasons discussed in the Appeal Brief and herein, Appellants request that the rejections be overturned and all pending claims allowed.

REMARKS

Appellants respectfully submit that the Examiner's Answer has not overcome the deficiencies noted in the Appeal Brief and still fails to meet the requirements for demonstrating obviousness under 35 U.S.C. § 103(a). In particular, as will be discussed below, the Examiner's Answer fails to adequately support the Examiner's assertion that the applied prior art teaches or renders obvious Appellant's steps of configuring and determining the claimed primary diagnostic scripts. It also fails to adequately support the Examiner's finding that the subject matter of the claims would have been obvious as a result of combining the teachings of the three applied references.

The Applied Prior Art does not Teach or Render Obvious the Use of a Primary Diagnostic Script that Recreates Known Problem Sequences

In his Answer, the Examiner maintains that the Shirane passage (Col. 10, lines 50, to Col. 11, line 14) teaches a primary diagnostic script that recreates known problem sequences. The only analysis offered by the Examiner in support of this position is his assertion that the Shirane passage teaches that "fault diagnosis can be made" and that the Shirane passage teaches "the fault diagnostic program detecting and analyzing fault when the fault diagnostic program executed [sic]." These statements in no way demonstrate that Shirane's fault diagnostic programs "recreate known problem sequences." In this regard, Appellant notes that a diagnostic script that recreates known problem sequences is not the same as any diagnostic program or script (such as a typical one that reads fault codes or sensors). Rather, it is a script that is configured based on at least one problem sequence that is already known and, furthermore, is a script that causes the vehicle to recreate this sequence. As discussed in the Appeal Brief, this is not an inherent feature of Shirane's fault diagnostic programs, nor is there anything identified by the Examiner that suggests such a feature.

Accordingly, this feature of Appellant's claim 1 is not rendered obvious by Shirane, nor (as acknowledged by the Examiner) is it disclosed or suggested by the other applied references. Thus, claim 1 and its dependent claims patentably define over the applied references. Claim 19 is allowable for the same reasons. Accordingly, the rejection of these claims should be reversed.

The Applied Prior Art has been Combined in an Improper Manner

        In the Appeal Brief, Appellant notes that the Examiner's combination of Marko, Sonnenrein, and Shirane would not render obvious the subject matter of independent claims 1 and 19 because, if combined, they would lead one of ordinary skill in the art to a result different than that being claimed by Appellant. The Examiner's response contained in the Answer is essentially no more than a short statement of each reference's disclosure followed by a statement that they are all within the same field of technology and a bald conclusion that therefore they render the claimed subject matter obvious. This response by the Examiner does not establish that it would have been obvious to combine the references in a manner that renders the claimed subject matter obvious. It does not even provide a proper reason for combining the teachings of the references. At most, the Examiner has demonstrated that the references are not non-analogous art and are capable of being combined. This falls far short of the requirements of a *prima facie* showing of obviousness.

        In the final rejection, the reason given by the Examiner for combining Shirane with the other applied references is to "provid[e] a fault diagnostic system for a vehicle which can provide fault diagnosis and classification with high accuracy oil [sic] the basis of data such as engine type and engine specification required for identifying a vehicle, and which can find a true faulty portion in a short time without requiring any special knowledge or experience." But, given these asserted reasons for the combination, one of ordinary skill in the art would not arrive at Appellant's claimed subject matter. The first of these two reasons would lead one to use Shirane's ECU-ID/VIN approach to selecting among different diagnostic programs. The second of these appears to refer to Shirane's priority selection approach discussed in connection with Fig. 7 at Col. 11, lines 10-37 and Col. 12, lines 46-54; this latter excerpt expressly identifying this priority feature as the basis for finding "a true faulty portion … in a short time." But what these reasons for combining would not do is motivate one of ordinary skill in the art to replace Sonnenrein's WML diagnostic scripts with ones that recreate known problem sequences.

        Accordingly, the Examiner has failed to show that, even if the applied references properly can be combined, that doing so would have led one of ordinary skill in the art to make

the combination recited in independent claims 1 and 19. Thus, for this reason as well, the rejection of claims 1-5, 7-9, and 19 should be reversed.

Claims 4 and 23

      With regard to the issue of claims 4 and 23 being separately patentable, the first Marko passage (Col. 3, lines 52-60) relied upon by the Examiner does not disclose or suggest *identifying diagnostic routines based on a request received from a user interface* as recited in these claims. The Examiner's Answer points to language in the passage that a "technician" analyzes the data and renders a diagnosis and that the analysis can be completed using real-time data exchange with the vehicle and executing diagnostic routines to accomplish the task. But this does not mean that diagnostic routines are being identified by the process based on input from the technician.

      Thus, the rejection of these claims should be reversed both because of their dependence on an allowable independent claim and because they recite additional subject matter that renders them separately patentable.

Claims 5 and 20-26

      The Examiner's Answer asserts that Marko teaches a plurality of diagnostic scripts that are determined based on diagnostic options and, in support, identifies the "data subsets" noted in the third Marko passage (Col. 7, line 66, to Col. 8, line 2). As explained in the Appeal Brief, this excerpt from Marko does not teach or suggest the use of diagnostic options as a basis for selecting scripts. Rather, the data being identified by Marko is the data being analyzed, not data being used to select or determine what scripts to use. Thus, the rejection of these claims appears to be based on a misinterpretation or mischaracterization of Marko. Accordingly, the rejection of these claims should be reversed.

Conclusion

      In view of the foregoing, Appellant requests that the rejections of all claims be overturned and the claims be held allowable.

The Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment associated with this brief to Deposit Account No. 07-0960.

Respectfully submitted,

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